

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUN 29 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

End User Common Line )  
Charges )

CC Docket No. 95-72

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**JOINT COMMENTS OF AMERICA ONLINE INCORPORATED,  
COMPUSERVE INCORPORATED, GE INFORMATION SERVICES, INC., AND  
PRODIGY SERVICES COMPANY**

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## **SUMMARY**

In this rulemaking proceeding, the Commission is examining the appropriate application of Subscriber Line Charges (SLCs) to services, such as Integrated Services Digital Network (ISDN), that enable the derivation of multiple voice-grade equivalent channels from a single telephone line or other communications facility provided by a local exchange carrier. America Online, CompuServe, GE Information Services, and Prodigy believe that the outcome of this proceeding will have an important impact on the development of the National Information Infrastructure and the extent to which all Americans have access to advanced information services.

The availability and potentially more widespread roll-out of ISDN and similar new derived channel technologies by the local exchange carriers offers one of the most promising means by which residential consumers and businesses can obtain high-quality, high-speed, digital access to the Internet and online services offered by the Joint Parties and other service providers. ISDN, for example, operates by dividing a communications facility, such as an ordinary telephone line or a T1 facility, into as few as three or as many as 24 channels through which data can flow at a rate up to 128,000 bits per second. With Basic Rate Interface ISDN service, a residential customer with an ordinary telephone local loop consisting of a single pair of twisted copper wires simultaneously can conduct a voice telephone conversation, access a bulletin board or database via an online service, and send/receive a telecopy. Because the speed and reliability at which data can be transmitted using ISDN greatly exceeds the capabilities of traditional modems and analog telephone service, videoconferencing and high-speed transmission of multimedia and data imaging projects are possible.

The Joint Parties support the proposed option, referred to by the Commission as the per facility approach, which would require users of derived channel services to pay one SLC for each physical facility through which the services are provided. Thus, one SLC would be assessed for each ordinary local loop or T1 facility regardless of the number of channels derived therefrom. Any other approach will dampen the demand for ISDN and similar derived channel services. Consumers are quite price sensitive when it comes to use of online services, and, for this reason, the application of a SLC to each derived channel would deprive end user consumers of the opportunity to fully utilize the Internet and other online services. The derived channel approach also would injure the economy as a whole, in light of the fact that the increasing use of information services contributes significantly to the efficiency, productivity, and competitiveness of U.S. businesses.

If ISDN and other derived channel services are to serve as on-ramps to the information superhighway, the Commission should act in such a way, while taking into account cost-causational principles, that the services are not priced out of the reach of many residential consumers and businesses. The Joint Parties believe that the best way to accomplish this is to adopt the per facility approach.

WASHINGTON, D.C. 20554

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**JOINT COMMENTS OF AMERICA ONLINE INCORPORATED,  
COMPUSERVE INCORPORATED, GE INFORMATION SERVICES, INC.,  
AND PRODIGY SERVICES COMPANY**

The Joint Parties are four of the nation's leading providers of online information database and Internet access

<sup>1/</sup> FCC 95-212, released May 30, 1995.

services. Together, they provide over 6 million residential, educational, nonprofit, and business subscribers with access to a multitude of interactive services. Among other things, these services allow people to bank, shop, and make travel reservations from their homes; access up-to-the-minute news, weather, financial, and sports information; utilize a host of instructional, educational, scientific, medical, and other reference databases; participate interactively in special interest forums and electronic bulletin boards on an almost limitless number of subjects; send and receive electronic mail; and access and utilize a range of Internet services, including news groups and the World Wide Web.

#### I. BACKGROUND

The NPRM addresses possible changes to the Commission's access charge rules.<sup>2/</sup> Those rules allow LECs to recover non-traffic sensitive costs associated with the interstate use of their local exchange facilities by imposing: (1) a monthly flat-rate SLC on residential and business end users;<sup>3/</sup> and (2) usage-sensitive charges on interexchange carriers through the Carrier Common Line ("CCL") rate element.<sup>4/</sup> However, because

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<sup>2/</sup> 47 C.F.R. § 69.1 et seq.

<sup>3/</sup> 47 C.F.R. § 69.104 (1994). Presently, the maximum SLC for single-line businesses and residential end users is \$3.50 per line per month, and the maximum SLC for multi-line businesses is \$6.00 per line per month. 47 C.F.R. § 69.203 (1994).

<sup>4/</sup> 47 C.F.R. § 69.105 (1994).

the access charge rules were promulgated more than 10 years ago, application of the rules as presently interpreted by the Commission to some of the technologies and services developed since that time, such as ISDN, is problematical.

ISDN operates by dividing a communications facility, such as an ordinary telephone line or a T1 facility, into as few as three or as many as 24 channels through which data can flow at a rate up to 128,000 bits per second. According to the NPRM, LECs currently offer two general types of ISDN service: (1) Basic Rate Interface ("BRI") service that allows a subscriber to obtain two voice-grade equivalent channels and a signalling/data channel from an ordinary telephone local loop consisting of a single pair of twisted copper wires; and (2) Primary Rate Interface ("PRI") service that allows a subscriber to obtain 23 voice-grade equivalent channels and one signalling/data channel from a T1 facility generally consisting of two twisted copper pairs.<sup>5/</sup> The availability and potentially more widespread roll-out of ISDN services by the LECs offers one of the most promising means by which residential consumers and businesses can obtain high-quality, high-speed, digital access to the Internet and online services such as those provided by the Joint Parties and other service providers.

The issue of how SLCs should be applied to ISDN and other derived channel services first arose in the context of a NYNEX tariff filing that proposed to assess only one SLC per T1

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<sup>5/</sup> NPRM at 2-3.

facility in connection with certain derived channel services, including ISDN, as long as all the derived channels were used to provide a single customer with those services. The Commission, concluded that, for purposes of applying Section 69.104 of its rules, each channel derived from an underlying facility, whether it be an ordinary local loop or a T1 facility, constitutes a separate "line" for purposes of assessing SLCs.<sup>6/</sup> The Commission affirmed this conclusion on reconsideration, but pointed out that the tariff filing raised policy issues better considered in the context of a rulemaking proceeding.<sup>7/</sup> Indeed, the Commission acknowledged that "new services, such as ISDN . . . deliver service over network architectures that differ from those envisioned when the access charge rules were first adopted."<sup>8/</sup>

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<sup>6/</sup> NYNEX Telephone Companies: Revisions to Tariff F.C.C. No. 1, 7 FCC Rcd 7938, 7939 (1992) ("NYNEX Order").

<sup>7/</sup> NYNEX Telephone Companies: Revisions to Tariff F.C.C. No. 1, 10 FCC Rcd 2247, 2252 (1995) ("NYNEX Reconsideration Order").

<sup>8/</sup> NYNEX Reconsideration Order, 10 FCC Rcd at 2250. These unanticipated developments continue to take place. In its petition requesting reconsideration of the NYNEX Order, Bell Atlantic indicated that the Commission's interpretation of the access charge rules in the NYNEX Order will be impossible to administer once the National ISDN 2 standard is implemented. Bell Atlantic Telephone Companies' Petition for Reconsideration of the Commission's Decision Regarding NYNEX's ISDN Tariff Filing at 6, December 30, 1992 ("Bell Atlantic Reconsideration Petition"). According to Bell Atlantic, this standard will enable users of PRI ISDN -- without any LEC input -- to reconfigure their service so that 24 channels are derived one minute, 10 channels are derived the next minute, and a single video channel is derived the following minute. Under these circumstances, Bell Atlantic says that "a SLC count based on channels rather than physical facilities will become largely meaningless." Bell Atlantic Reconsideration Petition at 6.



The Commission initiated this proceeding to address the policy issues presented in the NYNEX Order, seeking comment on various approaches for imposing SLCs on ISDN and similar derived channel services. One proffered option, referred to by the Commission as the per facility approach, would require users of derived channel services to pay one SLC for each physical facility through which the services are provided.<sup>9/</sup> Thus, one SLC would be assessed for each ordinary local loop or T1 facility regardless of the number of channels derived therefrom. The Commission also indicates that it could maintain the status quo, referred to by the Commission as the per derived channel approach, and require LECs to assess one SLC for each channel derived from ISDN and similar services.<sup>10/</sup> Finally, several intermediate options are identified by the Commission.<sup>11/</sup>

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<sup>9/</sup> NPRM at 11-12.

<sup>10/</sup> NPRM at 14.

<sup>11/</sup> NPRM at 13-14. The Commission states that an evaluation of the various options for computing SLCs must take the interplay between SLCs and CCL charges into account. Specifically, the Commission notes that, if the amount of non-traffic sensitive local loop costs recovered through SLCs decreases, the LECs might propose making up the difference through CCL charge increases. This in turn could increase interstate toll rates. For this reason, the Commission indicates that, to the extent changes in the way SLCs are computed would reduce the revenues recovered by LECs through SLCs, it would be desirable to avoid increases in interstate toll rates. NPRM at 9.

## **II. DISCUSSION**

- A. The Assessment Of SLCs On ISDN And Similar Services Should Be Kept As Low As Possible To Avoid Pricing Such Services Out Of The Reach Of Many Residential Consumers And Businesses And Thereby Deprive Them Of The Benefits Those Services Offer**

The Joint Parties believe that the outcome of this proceeding will have an important impact on the development of the National Information Infrastructure ("NII") and the extent to which all Americans have access to advanced information services. In our view, the level of SLCs paid by end users for ISDN and other derived channel services should be kept as low as possible, taking into account all of the public interest objectives which inhere in the development of a sound access charge regime, including as one factor adherence to cost-causational principles. The Joint Parties believe that adoption of the per facility approach for assessing SLCs outlined in the NPRM would be consistent with an appropriate balance of these public policy objectives.<sup>12/</sup>

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<sup>12/</sup> The Joint Parties are sensitive to the Commission's need to take cost-causational principles into account when considering changes to its access charge rules. However, as the U.S. Court of Appeals for the District of Columbia Circuit recognized when reviewing the Commission's early access charge decisions, ratemaking is not an exact science and the Commission has broad discretion to balance competing public policy objectives in the ratemaking context. Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095 (1984) ("NARUC v. FCC"). The court upheld the Commission's access charge decisions because they "reconciled widely diverse policy goals and numerous competing interests." NARUC v. FCC, 737 F.2d at 1137. The fact that the access charge rules do not adhere in some strict theoretical sense to cost-causational principles did not invalidate the Commission's decision because the rules were reasonable when judged in relation to the circumstances under which they were promulgated. (continued...)

As mentioned above, ISDN, if widely deployed, potentially could serve as a primary vehicle by which many residential consumers and businesses obtain high-speed, digital access to the Internet and commercial, nonprofit, and community online services. According to a petition for waiver filed by Bell Atlantic shortly after the NYNEX Order, ISDN would enable consumers with ordinary local loops simultaneously to conduct a telephone conversation, access a bulletin board or database via the Internet or other online services, and send/receive a telecopy.<sup>13/</sup> Moreover, the speed and reliability at which data can be transmitted using ISDN greatly exceeds the capabilities of traditional modems and analog telephone service.<sup>14/</sup>

The benefits to businesses of using ISDN also are significant. With ISDN, video conference calls and high-speed

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<sup>12/</sup> (...continued)

Thus, to the extent it may be claimed that the per facility approach is not strictly cost-causational -- and at this point there is no evidence that this is the case -- the Commission has the discretion to balance strict cost-causation with the need to avoid imposing costs on promising new technologies and services, such as ISDN, that potentially could undermine the economic viability of those technologies and services. Indeed, Section 7(a) of the Communications Act states that "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public." 47 U.S.C. § 157(a) (1994).

<sup>13/</sup> Bell Atlantic Telephone Companies' Emergency Petition for Waiver of Section 69.104 of the Commission's Rules in Connection With ISDN Services at 5, February 10, 1995 ("Bell Atlantic Petition").

<sup>14/</sup> Because ISDN enables data to be transmitted at up to 128,000 bits per second, it is approximately nine times faster than the most common modems -- 14,400 bit-per-second modems -- currently installed in U.S. computers.

transmission/receipt of multimedia projects is possible.<sup>15/</sup> In addition, widespread deployment of ISDN would enhance the ability of people to work from home and reduce and/or eliminate the need for the installation of expensive new cabling within the increasingly scarce conduit space of office buildings.<sup>16/</sup>

While ISDN has the potential to provide residential consumers and businesses with many benefits, many of those entities are unlikely ever to enjoy those benefits if the Commission requires the LECs to impose a SLC for each channel derived from ISDN. This method of calculating SLCs could price ISDN out of the reach of many residential consumers and businesses. Indeed, as noted in a letter submitted by CompuServe earlier this year in support of the Bell Atlantic Petition, this method of computing SLCs would add \$7.00 a month to the cost of BRI ISDN and \$80.50 a month to the cost of PRI ISDN.<sup>17/</sup> When this increased cost is added to other ISDN-related costs, such as the purchase of ISDN terminal equipment and LEC fees for initiating new service, many residential consumers and businesses likely would decide against using ISDN.<sup>18/</sup> These groups are

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<sup>15/</sup> Mills, Bells Ready High-Speed 'Net Hookups: FCC Pricing Issue Clouds ISDN Entrance, Washington Post, Washington Business Section at 19, February 20, 1995.

<sup>16/</sup> NPRM at 3.

<sup>17/</sup> Letter from Randolph May to William Caton at 2, March 9, 1995.

<sup>18/</sup> Bell Atlantic estimates that the increases in the cost of ISDN due to an increase in the SLC charge would reduce demand for BRI ISDN by approximately 60 percent and PRI ISDN by  
(continued...)

quite price-sensitive when it comes to use of online and other enhanced services. This price sensitivity, and its impact on the continued development and more widespread availability of enhanced services, is well recognized.<sup>19/</sup> Thus, application of a SLC to each channel derived from ISDN likely would deprive residential consumers and businesses of the opportunity to fully utilize the Internet and other online services because, as the Commission pointed out in the NPRM, services such as ISDN "facilitate improved access to the National Information Infrastructure."<sup>20/</sup>

**B. Imposition Of One SLC On Each Channel Derived Using ISDN Would Have A Deleterious Impact On The Economy And Impede Development Of The National Information Infrastructure**

Requiring the LECs to assess one SLC for each channel derived using ISDN also would have a deleterious impact on the online services industry and the U.S. economy. According to a recent report of the Department of Commerce ("DoC"), the information services industry, which includes online services, is

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<sup>18/</sup> (...continued)  
approximately 35 percent. Bell Atlantic also predicts that these increases in ISDN cost would induce as much as 25 percent of its existing ISDN customers, who already have invested in expensive ISDN terminal equipment, to terminate service. Bell Atlantic Petition at 7-8. In addition, Bell Atlantic and NYNEX reportedly may be compelled to cease providing ISDN if these cost increases, and the consequent reduction in demand for ISDN, become a reality. Loudermilk, ISDN Users Lobby FCC, LAN Times at 1, May 8, 1995.

<sup>19/</sup> See, e.g., Direct Testimony of Lee Selwyn on Behalf of Prodigy Services Company, Massachusetts Department of Public Utilities, DPU 91-63, July 24, 1991.

<sup>20/</sup> NPRM at 12.

one of the healthiest segments of the U.S. economy.<sup>21/</sup> Indeed, last year DoC projected that online and other electronic information services would experience annual growth rates of more than 15 percent for the next five years.<sup>22/</sup> Given these facts, the Commission should be sensitive to avoiding the erection of unnecessary regulatory barriers that threaten to dampen future demand for online services.<sup>23/</sup>

Moreover, to the extent unnecessary regulatory barriers are put in place that do hinder the continued growth of online services, the NYNEX Order also could have a deleterious impact on the U.S. economy as a whole. The reason for this is that the economy is becoming increasingly dependent on enhanced services to boost productivity and efficiency. Indeed, DoC last year found that "the increasing use of information services has contributed significantly to productivity, efficiency, competitiveness, and employment in the United States."<sup>24/</sup> Adherence to the position set forth in the NYNEX Order, however, would retard the deployment and use of those services and deny businesses the many benefits, such as enhanced opportunities for

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<sup>21/</sup> U.S. Global Trade Outlook: 1995-2000, U.S. Department of Commerce at 177, March 1995. DoC refers to enhanced services as information services.

<sup>22/</sup> U.S. Industrial Outlook 1994, U.S. Department of Commerce at 25-3, January 1994 ("Industrial Outlook").

<sup>23/</sup> See Welch, The FCC Drives Another Nail Into ISDN's Coffin, Network World at 53, April 25, 1995 (the NYNEX Order "will have a chilling effect on . . . the burgeoning on-line services industry . . .").

<sup>24/</sup> Industrial Outlook at 25-1.

telecommuting, videoconferencing, and high-speed data transmission, they offer. Intel summed things up very well in a letter of support for the Bell Atlantic Petition when it said that the NYNEX Order "is bad for residential users, bad for business users, bad for telecommunications carriers, bad for the computer industry, and bad for the productivity of this country."<sup>25/</sup>

Adherence to the position established in the NYNEX Order does not give effect to the principles articulated by the Clinton Administration designed to spur development of the NII. For instance, one of the NII principles articulated by the Administration is the need to promote private sector investment in the NII through "regulatory policies that encourage innovation and long-term [infrastructure] investment . . ."<sup>26/</sup> As noted above, however, by dampening demand for ISDN and other derived channel services, the NYNEX Order position would discourage further deployment of those services and may compel some of the LECs to cease providing such services. At the very least, this approach provides an incentive not to invest in the future development of potentially beneficial derived channel services. For this reason, the Administration sent a letter to Chairman Hundt soon after the NYNEX Order was released urging the

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<sup>25/</sup> Letter from Leslie Vadasz to Reed Hundt at 1, February 24, 1995.

<sup>26/</sup> The National Information Infrastructure: Agenda for Action, Information Infrastructure Task Force at 6, September 15, 1995.

Commission to reconsider.<sup>27/</sup> Ultimately, if ISDN and other derived channel services are to serve as on-ramps to the information superhighway, the Commission should act in such a way, while taking into account cost-causational principles,<sup>28/</sup> that the services are not priced out of the reach of many residential consumers and businesses. The Joint Parties believe that the best way to accomplish this is to adopt the per facility approach.

### III. CONCLUSION

In light of the foregoing, the Joint Parties urge the Commission to adopt the per facility approach outlined in the NPRM for application of SLCs to ISDN and other derived channel services. This approach would facilitate the continued growth of the NII and avoid dampening demand for ISDN and other derived

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<sup>27/</sup> Letter from Clarence Irving to Reed Hundt, March 17, 1995.

<sup>28/</sup> In support of the petitions for reconsideration of the NYNEX Order, Prodigy stated that "[i]t cannot be disputed that the application of more than one end user common line charge to a single local loop will over-recover the non-traffic sensitive costs properly assignable to that facility." Prodigy Comments in Support of Petitions for Reconsideration of the Commission's Decision Regarding NYNEX's ISDN Tariff Filing at 3, January 11, 1993. Prodigy went on to say that "it would be pure happenstance if there were any correlation between those charges and the cost of providing ISDN service." Id.



channel services that are used to access the information  
superhighway.

Respectfully submitted,

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COMPUSERVE INCORPORATED,  
GE INFORMATION SERVICES, INC.,  
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June 29, 1995

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**CERTIFICATE OF SERVICE**

I, Teresa A. Pumphrey, hereby certify that copies of the foregoing Joint Comments of America Online Incorporated, CompuServe Incorporated, GE Information Services, Inc., and Prodigy Services Company have been served by hand or via first-class United States mail, postage prepaid, this 29th day of June 1995 on the following:

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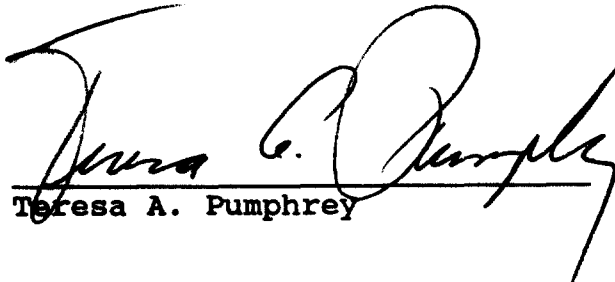
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